global
AUSTRALIA

Level 19, 201 Elizabeth Street
Sydney NSW 2000 AUSTRALIA
Telephone +61 2 8224 8555
Facsimile +61 2 8224 8500

FRAGOMEN
GLOBAL

5 November 2008

Committee Secretary
Senate Legal and Constitutional Affairs Committee
Parliament House
Canberra ACT 2600
Australia

By email: legcon.sen@aph.gov.au

Dear Sir

Fragomen thanks the Committee for the opportunity to take the following three questions/issues on notice and we now provide our response.

1. The first question was whether Fragomen had any comment or suggestion in relation to the alleged difficulties and complexities that would arise for sponsors and the Department if the changes proposed in the *Migration Legislation Amendment (Worker Protection) Bill 2008 (the Bill)* were not made 'retroactive' by applying them to all sponsors regardless of when their sponsorships were approved.

   We note that there is historical precedent for 'staged' changes to the sponsorship process. This would suggest that the difficulties raised by the Department are not so significant as to outweigh the general presumption that existing rights should not be diminished by legislative change.

   On 14 October 2003, the *Migration Legislation Amendment (Sponsorship Measures) Act 2003* came into force. That Act significantly changed the sponsorship process and codified the undertakings into legislation. It also introduced a stricter compliance regime for sponsors. That Act contained no transitional provisions of the type now suggested as essential. For a number of years after that Act came into affect there were two systems operating – one for employers approved for sponsorship before that date and one for those employers approved after that date.

   Other changes to the undertakings have also resulted in multiple systems operating at the same time. For example, there are different health undertakings for sponsorships lodged before 1 November 2005 to those lodged after that date: see regulation 1.20CB(k). There are also currently four MSL's depending upon the date of the visa approval.

In our experience, employers are accustomed to complex regulatory regimes and prefer the certainty that comes from systems in which changes cannot be made on an ad hoc basis, to systems, such as that proposed by the *Bill*, which provide no certainty and can be varied at the whim of the government.

Although we understand that the Department may face additional difficulties in administering two systems, this is a result of the change in government policy and is not a legitimate reason for introducing this type of retroactive obligation.

2. The second question was whether Fragomen had any submission in relation to the concept of a 'two –tier' system for 457 visas.

   We have no specific submission in relation to that issue as it may apply to the current *Bill*, but have made submissions to the Deegan Inquiry and to the External Reference Group which touched upon the issue in a more general way. We are in favour of a system which recognises those employers who use the 457 system appropriately.

3. The third question was whether Fragomen had any submission or comment to make about the provisions in the Bill relating to information sharing amongst agencies and government departments.

   We have nothing to add to the evidence given at the hearing.

Thank you again for the opportunity to make submissions and appear before the Committee. Please do not hesitate to contact us if we can provide further assistance.

Yours faithfully

Robert Walsh
Barrister and Solicitor
Managing Partner - Australia
Fragomen
MARN 9256939

Ron Kessels
Solicitor
Special Counsel
Fragomen
MARN 9358127